IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

MFA.No. 31 of 2003()

OPMV.1423/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT: PETITIONER

A.N.SAROJINI, AGED 51 YEARS, WIFE OF RAMAKRISHNAN, PLOT NO.51, KKF COLONY, ELAMAKKARA, COCHIN-26.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.NITHYA.K.

RESPONDENTS: RESPONDENTS
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1. THE MANAGER, 20TH CENTURY FINANCE CORPORATION LTD., NO.784, KARAKKAT ROAD, COCHIN-11.

2. ROY JOSEPH @ VAKKACHAN S/O. JOSEPH, NO.81, VELLOOKUNNU HOUSE, JAWAHAR NAGAR, KADAVANTHRA, COCHIN-20.

3. THE ORIENTAL INSURANCE CO.LTD., COCHIN-16.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 31 OF 2003

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Dated this the 3rd day of October, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1423 of 1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam, is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the Original Petition filed by the appellant claiming compensation.

2. Petitioner filed the O.P. claiming compensation alleging that she sustained injuries in a motor vehicle accident occurred on 22.1.1996. It was averred that on 22.1.1996 at about 5.15 p.m. while the appellant was walking along the side of the road, a car bearing Reg.No.KL-7/J-667 driven by the second respondent came in a rash or negligent manner and hit against the petitioner and she sustained injuries. It was alleged that the accident occurred due to the negligence of the second respondent, driver of the car. She claimed a compensation of Rs.50,000/-. Owner and driver did not appear and contest the case. Insurer alone contested the case.

Insurer admitted that it had issued an insurance policy in respect of the vehicle having Engine No.F8B IN 1124154 and Chasis No.SB 308 IN 742548 owned by the first respondent and the same was valid from 23.3.1995 to 22.3.1996. It was averred that in the Police records the registration number of the vehicle is not mentioned and the AMVI's report was not available. A contention was taken that the petitioner may be directed to produce the registration particulars of vehicle No.KL-7/J-667. It was contended that the second respondent, who was driving the car, was not possessed of a valid driving licence. It was further contended that the Police has registered a case against the second respondent for an offence under Section 3(1) read with Section 181 of the Motor Vehicles Act, he was found guilty and convicted. It was also contended that since the vehicle was driven by a person who was not having a valid driving licence, there is violation of policy conditions and therefore the Insurer is not liable. Compensation claimed was also denied.

3. Tribunal found that the appellant had produced only photocopies of the FIR and final report was not produced. But

the Tribunal failed to take note that in the written statement filed by the Insurer it was contended that an offence under Section 3(1) read with 181 of the Act was charged against the second respondent, he was found guilty of that offence and convicted. So it was admitted by the Insurer that final report was filed, Magistrate took cognizance of the offence as C.C. No.703 of 1996 and the second respondent was convicted. There is absolutely no need to produce final report in this case. Petitioner produced photocopies of registration particulars of the car. She is a victim of the accident. So at best it can be held that as there was violation of policy conditions, the Insurer is not liable. But the dismissal of the claim petition in its entirety is perverse and illegal. The matter requires reconsideration. For that purpose, the case has to go back.

4. In the result, appeal is allowed. The award passed by the Tribunal is hereby set aside. The Tribunal is directed to take O.P(MV) No.1423 of 1996 back to file and dispose of the same afresh in accordance with law, after giving opportunity to both sides to adduce evidence, if so advised.

Parties are directed to appear before the Motor Accidents Claims Tribunal, Ernakulam on 12.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 31 OF 2003

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J U D G M E N T

3RD OCTOBER, 2007